

Filed for intro on 01/13/2004  
HOUSE BILL 2138  
By McMillan

SENATE BILL 2052  
By Crutchfield

AN ACT to amend Tennessee Code  
Annotated Title 12,  
Chapter 4 regarding  
debarment and suspension  
of contractors

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1: Tennessee Code Annotated Title 12, Chapter 4  
is amended by adding the following as a new section:

Section \_\_\_\_.

(a)(1) This section applies to debarment of personal services, professional services, and consultant services contractors from consideration for award of contracts or a suspension from such consideration during an investigation where there is a reasonable basis for such a debarment.

(2) As used in this section, unless the context otherwise requires:

(A) "Debarment" means the disqualification of a personal services, professional services, or consultant services contractor and/or the contractor's specific officers or employees to receive requests for proposals or the award of a contract by a state agency or department of the executive branch for a specified period of time which may result from criminal, fraudulent, or seriously improper conduct, or the failure or inadequacy of performance;

(B) "Suspension" means the disqualification of a personal services, professional services, or consultant services contractor and/or the contractor's specific officers or employees to receive requests for proposals or the award of a contract by a state agency or department of the executive branch, for a temporary period pending the completion of an investigation, and any legal proceedings that may ensue because

that contractor is suspected upon a reasonable basis of engaging in criminal, fraudulent, or seriously improper conduct, or failure or inadequacy of performance which may lead to debarment.

(C) "Reasonable basis" means that the facts available would lead a person of ordinary care and prudence to believe that the contractor does not have the capacity in all respects, integrity, or reliability which would assure good faith performance of public contracts for which the contractor might otherwise normally be considered.

(b)(1) After reasonable notice to the contractor involved and a reasonable opportunity for that contractor to be heard, the Commissioner of Finance and Administration, upon recommendation of the head of an executive branch state agency or department shall have authority to debar a contractor from consideration for award of contracts, provided that doing so is in the best interests of the state and there is a reasonable basis for debarment. In addition to having the authority to debar or suspend, the Commissioner of Finance and Administration is also authorized to impose a lesser sanction such as civil penalties, restitution, or other remedial measures. Such decision to debar a contractor shall be provided in writing to the contractor and shall state the reasons for the action taken, as well as any employees or officers of the contractor that are separately included in the debarment.

(2) The debarment shall not be for a period of more than three (3) years.

(c)(1) The Commissioner of Finance and Administration or the head of an executive branch state agency or department shall have the authority to suspend a contractor from consideration for award of contracts, provided that doing so is in the best interests of the state and there is a reasonable basis for debarment. Such decision to suspend a contractor shall be provided in writing to the contractor and shall state the reasons for the action taken, as well as any employees or officers of the contractor that are separately included in the suspension.

(2) The suspension shall not be for a period exceeding three (3) months.

(d) The causes for debarment or suspension because of unsuitability for award of a contract shall be set forth in

regulations promulgated by the Commissioner of Finance and Administration. Such regulations shall also specify the procedures for a contractor's review rights of a debarment or suspension decision. Review rights of a debarment decision shall include the right of consideration by the review committee established in Tennessee Code Annotated 12-4-109, by filing a request for review within seven (7) days with the Commissioner of Finance and Administration. Any issues raised by the contractor after the seven (7) days shall not be considered by the review committee.

(e) Nothing in this section shall be construed to require a contested case hearing as set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, unless the Department of Finance and Administration has not promulgated rules governing the debarment or suspension process. The contractor subject to debarment or suspension must exhaust all administrative remedies provided in this section prior to the initiation of any judicial review of the debarment or suspension.

(f)(i) Any petition for judicial review of the final decision of the review committee shall be filed in Davidson County Chancery court within sixty (60) days of the review committee's final action. However, any such filing of a petition for review does not itself stay enforcement of the review committee's decision. The reviewing court may order a stay upon appropriate terms, but if it is shown to the satisfaction of the reviewing court, in a hearing which shall be held within ten (10) days of a request for hearing by either party, that any party or the public at large may suffer injury by reason of the granting of the stay, then no stay shall be granted until a good and sufficient bond, in an amount fixed and approved by the court, shall be given by the petitioner conditioned to indemnify the other persons who might be so injured and if no bond amount is sufficient, the stay shall be denied. The reviewing court shall not consider a stay unless notice has been given to the attorney general and reporter.

(ii) Within forty-five (45) days after service of the petition, or within further time allowed by the court, the review committee shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all the parties of the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may

require or permit subsequent corrections or additions to the record.

(iii) Such Chancery court review shall be conducted by the court without a jury and shall be confined to the record.

(iv) The court may affirm the decision of the review committee or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(A) In violation of constitutional or Statutory provisions;

(B) In excess of the statutory authority of the review committee;

(C) Made upon unlawful procedure;

(D) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(E) Unsupported by evidence which is both substantial and material to support the Commissioner's finding that there was a reasonable basis in the light of the entire record. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the review committee as to the weight of the evidence on questions of fact.

(v) No review committee decision hereunder shall be reversed, remanded, or modified by the reviewing court unless for errors which affect the merits of the decision. The reviewing court shall reduce its findings of fact and conclusions of law to writing and make them parts of the record.

(g) Notwithstanding anything to the contrary contained herein, this section does not prohibit a department or agency head and/or the review committee established in T.C.A. 12-4-109 from rejecting a vendor's proposal because the vendor is not a responsible proposer and it is not in the best interests of the state to make a contract award to that vendor.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

